

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 180 OF 2019**

Abdul Sattar Hasan Shaikh

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Milan Desai i/b. Ms. Ashwini M. Desai for Petitioner.

Ms. S.D. Shinde, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 1st February 2023.

P.C. :

1. By the present Petition, the Petitioner has prayed for registration of a crime against the wife of deceased and another persons for causing death of his son, namely, Abdul Aziz Sattar Shaikh.

2. Heard Mr.Desai, learned counsel for Petitioner and Ms.Shinde, learned A.P.P. for Respondent-State. Perused record produced before us and the Affidavit of Mr. Vikram A. Babar, Assistant Police Inspector dated 5th January 2023.

3. The son of the deceased, namely, Abdul Aziz Sattar Shaikh found hanging between 5.00 am to 6.00 am at his residential place i.e. C-404, Rizvi Oak Building, near Times of India, Malad (East), Mumbai. Upon receipt of information, Police immediately rushed to the said spot and found

that, the wife of deceased Smt. Afreen @ Ms. Sapna was present. She informed the Police that, her husband hanged himself and she took him down on floor by cutting the *Odhani/Dupatta*, which was tied to the ceiling fan. The Police have seized the said *Odhani/Dupatta* and also conducted Spot Panchanama. Deceased Abdul Aziz Sattar Shaikh was rushed to Siddharth Municipal General Hospital, Goregaon (West), Mumbai, where he was declared brought dead.

4. An Accidental Death Report No. 153 of 2018 under Section 174 of Cr.P.C. came to be registered with Kurar Police Station, Mumbai. The Medical Officer attached to Siddharth Post-mortem Center, Goregaon, Mumbai conducted autopsy on the dead body of Abdul Aziz Sattar Shaikh. In the column of 'Opinion as to the probable cause of death' he noted, 'Evidence of ligature mark seen around neck. Opinion reserved pending for necessary reports and blood reserved for C.A.'. After receipt of necessary reports from the other departments, the Medical Officer gave Final Cause of Death as, 'Death due to asphyxia due to hanging (unnatural)'. The Police accordingly submitted their report under Section 174 of Cr.P.C. to the Executive Magistrate (For Accidental Death), Samata Nagar Division, Mumbai. The concerned Magistrate has accepted the said Summary Report, as an Accidental Death Summary.

5. Mr.Desai, learned Advocate for Petitioner submitted that, the Petitioner was a hefty person and it was not possible for his wife to cut the

said *Odhani/Dupatta* and to lie him down on floor. That, in the clinical examination of dead body by the Doctor attached to Municipal Corporation Hospital, Casualty Ward, the length of ligature mark was mentioned as 20 x 1 x 0.5 cm, however in the Post-mortem Report it is mentioned as 35 x 5 cm. He submitted that, there cannot be increase in ligature mark by 15 cm and therefore the either of the reports are incorrect and therefore an inference be drawn that, it is a murder and not death by hanging. He submitted that, the Petitioner is having strong suspicion against the wife of his son and her paramour and the said aspect has not been investigated by the Police in proper perspective. He submitted that, therefore a crime has to be registered for investigating the said aspect.

6. We have perused all the documents. We have also perused the report submitted by the Police under Section 174 of Criminal Procedure Code (for short, "Cr.P.C.") before the Special Executive Magistrate (For Accidental Death), Samata Nagar Division, Mumbai and the documents annexed thereto.

7. As noted earlier, the experts in the field of Forensic Science have opined that, the Final Cause of Death of deceased as 'death due to asphyxia due to hanging (unnatural)'. If it would have been a case of murder, the Forensic Experts would have certainly mentioned that, death due to strangulation or by compression of neck by pressure and certainly not due to hanging. It therefore appears to us that, the death of Abdul Aziz Sattar

Shaikh was caused due to asphyxia due to hanging (unnatural). From the record, it further appears to us that, present is not case of 'murder' and is a case of 'suicidal hanging'.

8. In view of above, we find that, the prayer for the Petitioner cannot be granted.

9. Petition is accordingly dismissed.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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